IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 84 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2.	To be referred to the Reporter or not ?	
3.	Whether their Lordships wish to see the fair copy of the judgment ?	
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5.	Whether it is to be circulated to the civil judge ?	

==========

BLUE BLENDS PETROCHEMICALS LIMITED - Petitioner
Versus
... - Respondent

==========

Appearance :
MR SANDEEP SINGHI FOR SINGHI & CO for Petitioner.
None for Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 29/11/2007
ORAL JUDGMENT

1. The petitioner, namely, BLUE BLENDS PETROCHEMICALS LIMITED has filed this petition under Sections 100 to 104 of the Companies Act, 1956 for confirmation of Special Resolution set out in paragraph 7 of the petition and contained in Annexure C to the petition, in respect of reduction of capital. The petitioner has also sought for the approval of the proposed minutes as set out in para 11 of the petition. The petitioner further prayed for the direction to deliver to the Registrar of Companies, certified copy of the order to be made, including the minutes as approved within such period as may be granted by this Court. The petitioner also prayed for an order of publication of the notice and Registration of the order to be made and of the said minute, in such newspapers, as directed and within such period as granted by this Court. Lastly, the petitioner prayed for the dispensation with the use of words 'and reduced' to its name.

2. This Court has passed an order on 27.04.2007 and admitted the petition and order of advertisement was passed. The Company was directed to publish the advertisement in two local newspapers, 'Indian Express'

– English daily and 'Gujarat Samachar' – Gujarati Daily – both Ahmedabad editions. Publication of notice in Government Gazette was dispensed with. The Court has also observed that in view of the separate order passed by this Court in Company Application No. 192 of 2007 wherein the prayer for dispensation with the procedure laid down under Section 101 (2) of the Companies Act, 1956 was granted, the said prayer is not required to be considered now in the present Company Petition.

3. Pursuant to the order dated 27.04.2007, the notice has been published in 'Indian Express' – English daily and 'Gujarat Samachar' – Gujarati daily – both Ahmedabad editions dated 11.05.2007. A copy of each of the relevant newspaper cuttings is annexed along with the affidavit of publication of notice of petition filed on 16.08.2007.

4. An affidavit is also filed by Mr. Nirmal Kumar Sirohia, an Authorized signatory of the Company on 29.10.2007 wherein it is stated that pursuant to the publication of the hearing of the petition, neither the petitioner Company nor its advocate has received any objection to

the present petition except a letter dated 26.06.2007 from one Ranjanben Hirpara by the advocate of the petitioner. A copy of the said letter is attached along with the said affidavit. In the said letter, there is a reference to letter dated 15.05.2007 purported to be addressed by the said Ranjanben Hirpara. However, it is the say of the petitioner that neither the petitioner nor its advocate has received the said letter. In the letter dated 26.06.2007, the said Ranjanben has made a complaint about the non-receipt of annual reports / notices. It is stated that as per the records of the petitioner Company, the address of Ranjanben Hirpara is shown to be Himmatnagar Irrigation Project Circle, Sinchai Bhavan, Himmatnagar – 383 001. The petitioner Company, as per the records available, has not received any letter for change of address.

5. It is further stated that the petitioner Company vide letter dated 09.02.2007 sought the approval of the Vadodara Stock Exchange Limited, The Madras Stock Exchange Limited, The Calcutta Stock Exchange Association Limited and The Ahmedabad Stock Exchange Limited. The Madras Stock Exchange Limited has

sought for certain information from the petitioner Company by its letter dated 21.02.2007. The petitioner Company by its letter dated 03.04.2007 replied to the said letter dated 21.02.2007. After the filing of the petition, the petitioner Company received a letter dated 11.04.2007 from the Madras Stock Exchange Limited, wherein it is stated that copy of approval received from the Regional / Designated Stock Exchange in terms of Clause 24 (f) of the Listing Agreement is required to be submitted so as to enable them to proceed further in the matter. It is also stated in the said letter that the total amount of listing fees payable by the Company as on date is Rs.2,10,000/- and the Company was advised to send them a Demand Draft for Rs.2,10,000/- towards listing fees payable upto 2007-08.

6. In the above view of the matter, the Scheme of reduction of share capital is considered and objections raised by the Madras Stock Exchange Limited as well as Smt. Ranjanben Hirpara are also taken into consideration. Mr. Sandeep Singhi, learned advocate appearing for the petitioner Company is heard at length in the matter and the facts stated as well as averments made in the

petition are also taken into consideration.

7. It is averred in the petition that the Board of Directors of the Company in the Board Meeting held on 29.06.2006 have passed a Resolution for reduction in share capital to the extent of Rs. 15,34,40,000/-. As per the said Resolution, it was proposed to reduce the issued, subscribed and paid up equity share capital of Rs.19,18,10,000/- consisting of 1,91,80,000/- Equity shares of Rs. 10 each fully paid up, by way of sub-division of the face value of existing 1,91,80,000 issued and paid up equity shares of Rs. 10 each aggregating to Rs. 19,18,10,000 into 1,91,80,000 equity shares of Rs.2/- each aggregating to Rs.3,83,60,000/- and accordingly the face value to the extent of Rupees 8/- of every issued and paid up Equity Share shall stand reduced and cancelled by adjusting Rs. 15,34,40,000/- against and to the extent of debit balance in the Profit and Loss Account for the year ended 31st March, 2006.

8. The petitioner Company has justified the said capital restructuring on the ground that the paid up capital of the Company has been substantially eroded due to loss

as appearing in the Profit and Loss Account of the petitioner for the year ended on 31st March 2006. The paid up capital is not represented by corresponding assets due to losses. The Company has, therefore, decided to recast the balance sheet and reduce and write off the losses against the loss of capital. It is also justified on the ground that there is no likelihood that any Creditors of the Company would lose or be prejudiced as a result of the Capital Restructuring since no sacrifice or waiver is at all called for from them nor are their rights sought to be modified in any manner. It is, therefore, stated that the proposed reduction in no way adversely affects the interests of any Creditors. There is no diminution of liability in respect of unpaid share capital payment or payment to any shareholder of any paid-up share capital. It is also justified on the ground that the proposed reduction will have beneficial results for the Company, its shareholders and all concerned.

9. The Company, therefore, by special resolution, duly passed in accordance with Section 189 of the Act, at an Annal General Meeting held after due notice to the

Equity Shareholders on the 29th day of September, 2006 unanimously passed the following Resolution :-

"RESOLVED THAT pursuant to the provisions of Sections 100 to 104 and other applicable provisions of the Companies Act, 1956, provisions contained in Article 50 and other applicable provisions contained in the Memorandum and Articles of Association of the Company and subject to the confirmation by the competent Court, the consent and approval of the Company be and is hereby accorded to reduce the issued and paid up capital of the Company by way of sub-division of the face value of existing 1,91,80,000 (one crore ninety one lakhs and eighty thousand) issued and paid-up equity shares of Rupees 10/- (Rupees ten) each aggregating to Rupees 19,18,10,000/- (Nineteen crores eighteen lakhs) in to 1,91,80,000 (one crore ninety one lakhs eighty thousand) equity shares of Rupees 2/- (Rupees two) each aggregating to Rupees 3,83,60,000/- (Rupees three crores eighty three lakhs sixty thousand) and accordingly the face value to the extent of Rupees 8/- of every issued and paid up Equity Share shall stand as reduced and cancelled.

"FURTHER RESOLVED THAT the reduction in the capital of the Company aggregating to Rupees 15,34,40,000/- in terms of this Resolution as aforesaid be adjusted against and to the extent of debit balance in the Profit & Loss Account of the Company for the year ended 31st March 2006.

FURTHER RESOLVED THAT the Board of Directors be and is hereby authorized to fix, at appropriate time, a record date for the purpose of determining the names of the registered shareholders eligible to receive new share certificates.

FURTHER RESOLVED THAT upon confirmation of these resolutions and receipt of written order issued by the competent Court confirming the reduction of capital as aforesaid, the existing Clause V of the Memorandum of Association and Article 3 of the Articles of Association of the Company shall be substituted by the following :-

Clause V :- The Authorized Share Capital of the

Company is Rupees 20,00,00,000/- (Rupees twenty crores) divided into 10,00,00,000/- (Ten crores) equity shares of Rupees 2/- (Rupees two) each with power to increase the capital from time to time and divide the shares of the original or any increased capital into several classes and to attach thereto respectively such preferential, qualified or special rights, privileges or conditions as regards capital, dividends, voting or otherwise as the regulations of the Company as originally framed or as altered by Special Resolution shall for the time being prescribe and determine.

Article 3 : The Authorized Share Capital of the Company is Rupees 20,00,00,000/- (Rupees twenty crores) divided into 10,00,00,000/- (Ten Crores) equity shares of Rupees 2/- (Rupees two) each with power for the Company to sub-divide, consolidate and increase or reduce the said capital and to divide the shares in the capital of the Company for the time being into Equity Share Capital and Preference Share capital and to issue any part of its original or increased capital or with or without any Preference, priority or special privileges and conditions as may be determined by or in accordance with the Articles of Association of the Company and vary, modify or abrogate any such rights, privileges and conditions in such manner or by law.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company (which term shall be deemed to include any authorized committee thereof for the time being exercising the power conferred on the Board by this resolution) be and is hereby authorized to do all such acts, deeds and things which the Board may, in its absolute discretion, deem necessary, expedient, proper or desirable and to settle any difficulty that may arise with regard to any issue arising from this resolution and to accept such modification in the terms and conditions of reduction of capital which may be required or directed by the competent Court to implement this resolution."

10. Mr. Sandeep Singhi has, therefore, submitted that the proposed reduction does not involve diminution of any

liability in respect of unpaid capital or the payment to any shareholders of any paid-up Share Capital. The rights and interest of the Creditors will not be in any way affected since no sacrifice or waiver is at all called for from them nor their rights sought to be modified in any manner.

11. Mr. Sandeep Singhi has, therefore, submitted that the Form of minute proposed to be registered under Section 103 (1) (b) of the Act is as follows :-

"The Capital of Blue Blends Petrochemicals Limited is henceforth Rs.3,83,60,000/- divided into 1,91,80,000/- equity shares of Rs. 2 each, reduced from Rs.19,18,00,000/- divided into 1,91,80,000 equity shares of Rs. 10 each. At the date of the registration of this minute 1,91,80,000 equity shares numbered from 001 to 19180000 have been issued and are deemed to be fully paid (and the remaining NIL shares are unissued)."

12. After having heard learned advocate appearing for the petitioner Company and after having considered the petition along with the documents attached therewith as well as the Resolutions passed by the Company at its annual general meeting, the Court is of the view that the relief prayed for by the petitioner in this petition deserves to be granted. The reduction of capital

resolved by the special resolution set out herein above and set out in paragraph 7 of the petition as well as contained in Annexure C to the petition is hereby granted. The minutes as set out hereinabove and also in para 11 of the petition is also approved and the petitioner is hereby directed to deliver to the Registrar of Companies, the certified copy of the order including the minutes as approved within 21 days and the notice and registration of the order as well as the minute be published in 'Indian Express' and 'Gujarat Samachar' – both Ahmedabad editions within a period of 14 days from the date of registration by Registrar of Companies. The petitioner is thereafter dispensed with the use of words “and reduced” to its name.

13. It is, however, clarified that before the above order is effected, the petitioner shall file an undertaking before this Court within a period of one week from today stating therein that the petitioner will pay to Madras Stock Exchange Limited an amount of Rs.2,10,000/- being listing fees payable to Madras Stock Exchange Limited upto 2007 – 2008 within a period of 12 months from today. The undertaking be filed by Mr. Nirmal Kumar

Sirohia, Authorised Signatory of the petitioner Company. It is made clear that if the amount as undertaken to be paid is not paid, this order shall stand revoked.

14. A copy of this order be forwarded by the petitioner to the Madras Stock Exchange Limited. The said fact should also be stated in the undertaking which is to be filed before this Court.

15. With the aforesaid observation and direction, this petition is accordingly disposed of.

[K. A. PUJ, J.]

Savariya